IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

PETN,UNDER ARBITRATION ACT. No 4 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NICCO CORPORATION LTD.

Versus

O.N.G.C. LTD.

Appearance:

1. PETN,UNDER ARBITRATION ACT. No. 4 of 2004

MS SHAILI A KAPADIA for Petitioner No. 1

MR RR MARSHALL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI

Date of decision: 05/03/2004

ORAL JUDGEMENT

In view of the order dated 6.2.2004, notice was issued to the respondent, which was made returnable on

20.2.2004. Mr. Marshall, learned advocate appears on behalf of the respondent and as per his request before me on 27.2.2004, the matter was kept today for consideration.

2. Considering the application, where the petitioner has prayed for appointment of an Arbitrator to resolve the dispute under Section 11 of the Arbitration and Conciliation Act, 1996 by relying upon the arbitration clause in the agreement and with the consent of the counsel appearing in the matter and in view of the stand taken by the parties, this application is to be disposed off finally and accordingly, Rule is required to be issued. Hence, Rule. Mr. Marshall, learned advocate for the respondent Oil & Natural Gas Commission waives service of Rule. By consent of the counsel appearing in the matter, Rule is fixed forthwith.

3. Heard Ms. Kapadia, learned advocate for the petitioner and Mr. Marshall, learned advocate, who appeared on behalf of the respondent. During hearing I was taken through the application and documents attached thereto. As found from the petition, the present petition is filed praying for appointment of an Arbitrator in respect of the dispute arising out of contract agreement dated 17.4.2000 and before filing this petition, the petitioner has issued legal notice to the respondent through advocate on 15.11.2003 for appointment of arbitrator and the said notice was duly served on the respondent. However, there was no compliance from the respondent, except by informing Ms. Kapadia through G.M. - I/c. CWS, HES, O.N.G.C. Baroda that further correspondence be made to The General Manager HES, O.N.G.C., KDM Bhawan, Palavasana, Mehsana - 384003 and the original notice dated 15.11.2003 is also being sent to the General Manager of the said authority. In light of the this reply received and there was inaction on the part of the respondent, the petitioner has filed this petition, wherein, the petitioner has placed reliance upon the contract agreement entered into between the parties, in which there is an arbitration clause. I have perused the said agreement and Clause No. G.26, which the petitioner has relied upon and accordingly, legal notices were issued to the respondent on 19.7.2004 and 15.11.2003 and in spite of this, there was an inaction on the part of the respondent for making appointment as required by the petitioner. In this petition, the petitioner has prayed for appointment of retired Judge of this court as an Arbitrator in respect of the dispute between the parties, under agreement dated 17.4.2000. This petition is supported with an affidavit of Debabrata

Das dated 4th February, 2004.

4. In view of the stand taken by the respondent, no reply affidavit is filed and during hearing, Ms. Kapadia, learned advocate appearing for the petitioner has produced before me the fax message i.e. letter issued under the signature of Shri S. Rawat, C.E.(C&M), ONGC, Mehsana dated 26.2.2004 addressed to Ms. Kapadia and copy of which is endorsed to the petitioner Company at Baroda. Ms. Kapadia has submitted that she has received this fax message from her client. As found from the said letter, the respondent authority has referred to the letter of 15.11.2003 in respect of request for appointment of an arbitrator. The respondent authority has accordingly informed, as indicated in the letter that they have appointed Shri A.P. Ravani, Retired Chief Justice of Rajasthan High Court as their arbitrator.

5. Ms. Kapadia has accordingly submitted that as indicated in the legal notice issued to the respondent, the petitioner had already informed the respondent that petitioner has appointed Mr. N.J. Pandya, Retired Judge of the Bombay High Court as an arbitrator and they have also suggested that, if they are agreeable for Mr. N.J. Pandya, Retired Judge of the Bombay High Court, as a sole Arbitrator, then Mr. N.J. Pandya. Retired Judge of the Bombay High Court, be appointed as a Sole Arbitrator.

6. As observed earlier that so far as respondent has appointed Mr. A.P. Ravani, Retired Chief Justice of Rajasthan High Court as an arbitrator on behalf of the ONGC and in view of the stand taken by the parties, I appoint Shri N.J. Pandya, Retired Judge of the Bombay High Court as an Arbitrator on behalf of the petitioner Company and Mr. A.P. Ravani, Retired Chief Justice of Rajasthan High Court as an Arbitrator on behalf of respondent ONGC to resolve the dispute between the parties. As both the parties have appointed their Arbitrators, both the Arbitrator will take steps for appointment of Empire as contemplated under the Act to resolve the dispute in accordance with law. While disposing of this petition, I will make it clear that I have not dealt with the contentions raised before me by the counsel appearing in the matter as well as contentions raised in the petition on merits and the parties have at liberty to take all contentions before the Arbitrator in a Arbitration Proceedings. Petition is accordingly allowed with no costs. Rule is made absolute in above terms.

(D.K. Trivedi, J.)

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